

§ 780.202

§ 780.202 Subordination to farming operations is necessary for exemption.

While section 3(f) speaks of practices performed “in conjunction with” as well as “incident to” farming operations, it would be an unreasonable construction of the Act to hold that all practices were to be regarded as agricultural if the person performing the practice did any farming, no matter how little, or resorted to tilling a small acreage for the purpose of qualifying for exemption (*Ridgeway v. Warren*, 60 F. Supp. 363 (M.D. Tenn.); *in re Combs*, 5 WH Cases 595, 10 Labor Cases 62,802 (M.D. Ga.)). To illustrate, where an employer owns several thousand acres of timberland on which he carries on lumbering operations and cultivates about 100 acres of farm land which are contiguous to such timberland, he would not be engaged in agriculture so far as his forestry or lumbering operations are concerned. In such case, the forestry or lumbering operations would clearly not be subordinate to the farming operations but rather the principal or a separate business of the “farmer.”

§ 780.203 Performance of operations on a farm but not by the farmer.

Logging or sawmill operations on a farm undertaken on behalf of the farmer or on behalf of the buyer of the logs or the resulting lumber by a contract logger or sawmill owner are not within the scope of agriculture unless it can be shown that these logging or sawmill operations are clearly incidental to farming operations on the farm on which the logging or sawmill operations are being conducted. For example, the clearing of additional land for cultivation by the farmer or the preparation of timber for construction of his farm buildings would appear to constitute operations incidental to “such farming operations.”

§ 780.204 Number of employees engaged in operations not material.

The fact that the employer employs fewer than a certain number of employees in forestry and lumbering operations does not provide a basis for their being considered as agricultural employees. This is to be distinguished from the exemption provided by section 13(a)(13) (discussed in part 788 of

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this chapter) which is limited to employers employing not more than eight employees in the forestry or logging operations described therein.

NURSERY AND LANDSCAPING OPERATIONS

§ 780.205 Nursery activities generally.

The employees of a nursery who are engaged in the following activities are employed in “agriculture”:

(a) Sowing seeds and otherwise propagating fruit, nut, shade, vegetable, and ornamental plants or trees (but not Christmas trees), and shrubs, vines, and flowers;

(b) Handling such plants from propagating frames to the field;

(c) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

[74 FR 26015, May 29, 2009]

§ 780.206 Planting and lawn mowing.

(a) The planting of trees and bushes is within the scope of agriculture where it constitutes a step in the production, cultivation, growing, and harvesting of agricultural or horticultural commodities, or where it constitutes a practice performed by a farmer or on a farm as an incident to or in conjunction with farming operations (as where it is part of the subordinate marketing operations of the grower of such trees or bushes). Thus, employees of the nurseryman who raised such nursery stock are doing agricultural work when they plant the stock on private or public property, trim, spray, brace, and treat the planted stock, or perform other duties incidental to its care and preservation. Similarly, employees who plant fruit trees and berry stock not raised by their employer would be considered as engaged in agriculture if the planting is done on a farm as an incident to or in conjunction with the farming operation on that farm.

(b) On the other hand, the planting of trees and bushes on residential, business, or public property is not agriculture when it is done by employees of an employer who has not grown the trees and bushes, or who, if he has grown them, engages in the planting operations as an incident, not to his farming operations, but to landscaping operations which include principally